

1 BRUCE W. NICKERSON, C.B.N. 90760
2 231 Manor Drive
3 San Carlos, CA 94070
4 Tel: (650) 594-0195

5 Attorney for JOHN DOE and the Plaintiff Class

6
7 **IN THE UNITED STATES DISTRICT COURT FOR**
8 **THE NORTHERN DISTRICT OF CALIFORNIA**

9
10 JOHN DOE, individually and on behalf of a }
11 Class of Persons similarly situated, }

12 Plaintiffs,

Case No. 20-5203

13 vs.

14 } **CLASS ACTION COMPLAINT FOR**
15 **FALSE ARREST AND**
16 **DISCRIMINATORY ENFORCEMENT**

17 CALIFORNIA HIGHWAY PATROL, SGT. }
18 PAUL McCARTHY, OFFICER BRIAN }
19 BARCKELY, and DOES I through X, }
inclusive,

JURY TRIAL DEMANDED

20 Defendants.

21 }

22 **INTRODUCTION**

23 1. This is a civil rights action for declaratory and injunctive relief and damages
24 brought pursuant to 42 U.S.C. Sections 1983, 1985 and 1988, 18 U.S.C. 1961 et seq., the
25 First, Fourth, and Fourteenth Amendments to the United States constitution, and the
26 Commerce Clause. The Complaint seeks redress from one or more of the Defendants due

1 to their: (i) arbitrary and unlawful discrimination on the basis of perceived sexual
2 orientation; (ii) arbitrary and unlawful discrimination on the basis of gender; (iii) practice of
3 arbitrarily, unlawfully and maliciously enforcing the law in a discriminatory manner against
4 the named Plaintiff and other similarly situated individuals; (iv) practice of arbitrarily,
5 unlawfully and maliciously harassing, targeting for arrest and/or arresting the named
6 Plaintiff and other similarly situated individuals without probable cause; (v) practice of
7 arbitrarily, unlawfully and maliciously violating the named Plaintiff and other similarly
8 situated individuals' right to freedom of speech, expression, association, and (vi) practice
9 of arbitrarily, unlawfully and maliciously violating the named plaintiff's and other similarly
10 situated individuals' right to equal protection under the law.
11
12
13

14 **JURISDICTION AND VENUE**

15 2. This Court has jurisdiction of this action under 28 U.S.C. § 1331 and 1343.
16 Pursuant to 28 U.S.C. § 1391, venue is proper in this Court because the acts and/or
17 omissions complained of occurred in the Northern District of California and the acts
18 described took place within the Northern District of California.
19

20 3. The amount in controversy herein, excluding interest and costs, exceeds the
21 minimum jurisdictional limit of this Court.
22
23
24
25
26
27
28

PARTIES

4. Named Plaintiff JOHN DOE was at all relevant times a resident of the City of San Jose, County of Santa Clara, California.

5. The above named plaintiff seeks to represent a class of individuals (hereinafter, the "Plaintiff Class"), which is defined and described in further detail at paragraph 15 below.

6. Defendant CALIFORNIA HIGHWAY PATROL (hereinafter CHP) is a statewide law enforcement agency who employs the other defendant in this action.

7. Defendant SGT. PAUL MCCARTHY is the Supervisor of the Redwood City Branch of the CHP and at all time herein mentioned supervised the other individual defendant. He is sued in his individual and official capacity.

8. Defendant OFFICER BRIAN BARCKLAY is an officer of the CHP, works out of the Redwood City Branch and is sued in his individual and official capacity.

9. Plaintiffs are informed and believe and thereon allege that each of the Defendants sued herein was negligently, wrongfully or otherwise responsible in some manner for the events and happenings as hereinafter described, and proximately caused injuries and damages to Plaintiffs and members of the Plaintiff Class.

10. Plaintiffs are informed and believe and thereon allege that each of the Defendants was at all relevant times an agent, servant, employee, partner, joint venturer, co-conspirator, and/or alter ego of the remaining Defendants, and in doing the things herein alleged, was acting within the course and scope of that relationship. Plaintiffs are further informed and believe and thereon allege that each of the Defendants herein gave

1 consent, aid, and assistance to each of the remaining Defendants, and ratified and/or
2 authorized the acts or omissions of each Defendant as alleged herein, except as may be
3 hereinafter otherwise specifically alleged.

4 11. At all relevant times, each Defendant was jointly engaged in tortious activity,
5 resulting in the deprivation of Plaintiffs' and members of the Plaintiff Class' constitutional
6 rights and other harm. At all relevant times, each Defendant acted under color of the laws,
7 statutes, ordinances, policies, practices, customs, and usages of the State of California,
8 and the CHP.

10

11 **PLAINTIFF CLASS ALLEGATIONS**

12

13 12. The named Plaintiff and putative class representative bring this class action
14 for declaratory and injunctive relief and damages on his own behalf and on behalf of all
15 others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure.
16 Plaintiff is a member of the class of persons whose members have been harmed by the
17 specific allegations which are set forth infra in paragraph 15.

18 13. The Plaintiff Class consists of all men who have been falsely ticketed for
19 parking after dark in certain Rest Stops along Interstate 280, because they are perceived
20 to be interested in meeting in public, men interested in non-monetary intimate association
21 with other men.

22 A. The membership of the defined class is so numerous that joinder of all
23 members is impractical. On information and belief, there are hundreds of men who have
24 been illegally ticketed since 1996 for Parking violations of California law by the CHP
25
26

1 because they were perceived to be interested in meeting in public, men interested in non-
2 monetary intimate association with other men.

3 B. There are questions of law and fact common to the class, and those
4 questions predominate over questions affecting individual class members. Those common
5 questions include: whether one or more of the Defendants have violated the United States
6 Constitution, the California Constitution and California Statutory law by: (i) targeting areas
7 believed to be frequented by men, who are perceived to be interested in meeting, in
8 public, men interested in intimate association with other men, for the purpose of
9 discouraging these men from these areas and/or arresting them; (ii) effecting false arrests
10 of men, including men who did not violate any law but who are perceived to be interested
11 in meeting, in public, men interested in non-monetary intimate association with other men;
12 (iii) publicizing the targeting and arrests of men who are perceived to be interested in
13 meeting, in public, men interested in non-monetary intimate association with other men;
14 and (iv) inadequately or improperly training CHP officers and sending them into areas
15 known or assumed to be frequented by men who are perceived to be interested in
16 meeting, in public, men interested in non-monetary intimate association with other men,
17 with the unlawful objective of violating their rights pursuant to California law as well as their
18 constitutionally protected rights to freedom of speech, expression, and association, to be
19 free from unlawful search and seizure, to privacy and to equal protection.
20

21 C. The claims of the named Plaintiff and putative class representative is
22 typical of the claims of the Plaintiff Class, since the named Plaintiff: (i) was perceived by
23 one or more CHP officers to be interested in meeting, in public, men interested in non-
24

monetary intimate association with other men; (ii) was in or near a location targeted by
1 CHP officers because it is believed to be an area frequented by men interested in meeting,
2 in public, men interested in non-monetary intimate association with other men; (iii) did not
3 engage in any unlawful act in violation of federal, state, or municipal law; and (iv) was
4 ticketed without a warrant and without probable cause even though he had committed no
5 criminal act.
6

7 D. Thus the named plaintiff will uniquely and fairly represent and adequately
8 protect the interests of the Plaintiff Class, and will do so vigorously and zealously. The
9 named Plaintiff has no interests antagonistic to the Plaintiff Class; he seeks relief which
10 will benefit all members of the Plaintiff Class, and he is represented by counsel who is
11 competent and experienced in civil rights litigation.
12

13 E. The Defendants, by establishing, maintaining, encouraging, allowing
14 and/or ratifying the practices alleged in this complaint, have acted on grounds generally
15 applicable to the Plaintiff Class and, as a result, declaratory and injunctive relief with
16 respect to the Plaintiff Class is appropriate.
17

18 F. Prosecution of separate actions by individual class members would create
19 a risk of inconsistent or varying adjudications with respect to class members which would
20 establish incompatible standards for parties opposing the class, and Defendants have
21 acted or refused to act on grounds generally applicable to the class and its members, and
22 class questions predominate with respect to the class.
23

24 G. Therefore these actions are maintainable under F.R. Civ. P. Rule 23(a),
25 (b)(1)(A), (B)(1), (2), and (3).
26

1 H. The nature of the notice to be provided to class members would be
2 determined by the court.
3
4

FACTUAL ALLEGATIONS

5 14. The CALIFORNIA HIGHWAY PATROL and SGT. PAUL MCCARTHY
6 have established, maintained, encouraged, allowed and/or ratified a custom, practice or
7 policy of: (i) targeting areas believed to be frequented by men who are perceived to be
8 interested in meeting, in rest areas, men interested in non-monetary intimate association
9 with other men, for the purpose of harassing these men and interfering with their rights of
10 speech, privacy, expression, association and equal protection; (ii) falsely arresting men
11 who are perceived to be interested in meeting, in rest areas, men interested in non-
12 monetary intimate association with other men, without warrants and with probable cause
13 and accusing them of engaging in criminal activity even though no criminal activity was
14 engaged in; (iii) treating individuals differently based on their gender and/or perceived
15 sexual orientation; and (iv) failing to adequately train, supervise, instruct, monitor, and
16 discipline Highway Patrol Officers.
17
18

20 15. These defendants have established, maintained, encouraged, allowed,
21 and/or ratified the above custom, practice or policy with the tacit understanding that it
22 would promote the unconstitutional and illegal goal of reducing the number of men who
23 are interested in meeting in rest areas, men interested in non-monetary intimate
24 association with other men from meeting one another in rest areas in San Mateo County
25 particularly those along Interstate 280.
26
27
28

1
2 **Allegations Pertaining to Named Plaintiff and Putative Class Representative JOHN**

3 **DOE**

4 16. Pursuant to the practice or policy set forth above, Plaintiff DOE was
5 subjected to a course of conduct as described below.

6 17. On October 24, 2018, around 6:15 a.m., Plaintiff DOE was sitting in his
7 parked car at a rest stop on the East side of Interstate 280.

8 18. Plaintiff was resting having driven from his home in San Jose, on his way to
9 his office in San Francisco. Plaintiff frequently stopped at that rest area because it was a
10 convenient place to rest situated half-way between his home and his office.

11 19. Plaintiff exited his vehicle, walked round, and checked his email. After a few
12 minutes a CHP vehicle driven by Defendant BRIAN BARCKLAY arrived at the rest atop
13 and began ticketing vehicles.

14 20. All of the drivers of these vehicles were single men.

15 21. Plaintiff attempted to leave but was told to get in his car and wait. Plaintiff did
16 as directed and was given a ticket for parking after dark in violation of Vehicle Code §
17 22520.6.

18 22. A week later Plaintiff received a notice from the court that there was an error
19 in the ticket. The code section cited was incorrect. The correct code was " Superior Court
20 no." (illegible). There was also a new court date.

21 23. Plaintiff appeared at the new date and ultimately set the matter for trial on
22 two grounds: 1. The arrests were discriminatory in that no women or drivers with families

were ever ticketed; and 2. The statute violated the California Constitution because it prohibited an activity specifically endorsed by the legislature and thus violated the Supremacy Clause of the California Constitution.

24. Accordingly Plaintiff filed a motion to dismiss on these grounds. On September 23, 2019 the Superior Court, Traffic Division, dismissed the violation.

25. Plaintiff now brings this lawsuit on his behalf and on behalf of others similarly situated who have been ticketed falsely since the ordinance was passed in 1996.

26. Plaintiff demands a jury trial.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION, FALSE ARREST

42.U.S.C.1983

4th, 14th Amendment

27. Plaintiffs re-allege and incorporate herein by reference the allegations in paragraphs 1 through 26, above.

28. When Defendant Officer BARCKLEY ticketed Plaintiff for parking after dark at a rest area that the legislature had determined to be a place for resting, he made a false arrest because the ordinance prohibiting after dark parking was unconstitutional under the Supremacy Clause of the California Constitution.

29. At all relevant times Officer BARCKLEY was under the supervision of defendant PAUL McCARTHY who promulgated the unconstitutional arrest.

1 30. As a proximate result of the acts of Defendants, and each of them, as herein
 2 alleged, Plaintiff was compelled to expend money all to his damage in an amount
 3 according to proof.

4 31. As a proximate result of the acts of Defendants, and each of them, Plaintiff
 5 has suffered damage to his reputation as well as shame, humiliation and embarrassment
 6 in the community.

7

8

9 **SECOND CAUSE OF ACTION, DISCRIMINATORY ARREST**

10 42.U.S.C.1983

11 14th Amendment

12

13 32. Plaintiffs re-allege and incorporate by reference herein the allegations of
 14 paragraphs 1 through 31, above.

15 33. When Defendant Officer BARCKLEY ticketed Plaintiff for parking after dark
 16 at a rest area that the legislature had determined to be a place for resting, he violated
 17 Plaintiffs' right to equal protection of the laws under the Fourteenth Amendment to the
 18 United States Constitution in that Defendants, and each of them, only targeted men who
 19 were perceived to be interested in meeting, in public, men who were interested in non-
 20 monetary, intimate association with other men and ignored women and persons with
 21 families who were parking after dark as held in *Baluyut V. Superior Court*, (1996) 12 Cal.
 22 4th 826.

1 34. As a proximate result of the acts of Defendants, and each of them, as herein
 2 alleged, Plaintiff was compelled to expend money all to his damage in an amount
 3 according to proof.

4 35. As a proximate result of the acts of Defendants, and each of them, Plaintiff
 5 has suffered damage to his reputation as well as shame, humiliation and embarrassment
 6 in the community.

7

8

9 **THIRD CAUSE OF ACTION, MONELL CLAIM**

10 42.U.S.C.1983

11 Policy and Custom

12

13 36. Plaintiffs re-allege and incorporate by reference herein the allegations in
 14 paragraphs 1 through 35, above.

15 37. The Highway Patrol and SGT. PAUL McCARTHY have, under color of law,
 16 violated Plaintiffs' rights, privileges and immunities secured by the United States
 17 Constitution in violation of Section 1983 of Title 42 of the United States Code.

18 38. The above described customs, practices and policies demonstrate a
 19 deliberate indifference on the part of the Defendants, and each of them, to the
 20 constitutional rights of persons who park along Highway Interstate 280 within the County
 21 of San Mateo, and were the cause of the violations of Plaintiff's rights alleged herein.

22

23 39. During all relevant times, one or more of the Defendants, and particularly
 24 Defendant SGT. PAUL McCARTHY established, maintained, encouraged, allowed and/or
 25 ratified a custom, practice or policy of providing inadequate training, supervision,

1 instruction, oversight, and discipline to Highway Patrol Officers, including those mentioned
2 above, thereby failing to adequately discourage constitutional violations and tacitly
3 agreeing to violate Plaintiffs' constitutional rights.

4 40. The above described customs, practices and policies demonstrate a
5 deliberate indifference on the part of Defendants, and each of them, and particularly
6 Defendant SGT. PAUL McCARTHY to the constitutional rights of persons who park along
7 Highway Interstate 280 within the County of San Mateo, and were the cause of the
8 violations of Plaintiffs' rights alleged herein.

9 41. Plaintiffs were unlawfully seized, ticketed/detained by Defendants without
10 warrant, order, commitment, or any other legal authority as Plaintiffs had not committed
11 any crime or public offence.

12 42. The conduct as alleged above is ongoing, creating the likelihood of future
13 injuries to Plaintiffs, and the Plaintiff class.

14 43. Since Plaintiffs and the Plaintiff Class legally are entitled to park overnight at
15 rest stops along Interstate 280 in San Mateo County where Defendant Highway Patrol
16 officers engage in the activities described above, they face imminent danger of further
17 arrest and harassment as alleged above.

18 44. As a proximate result of the acts of Defendants, and each of them, as herein
19 alleged, Plaintiffs and members of the Plaintiff class were compelled to expend money all
20 to their damage in an amount according to proof.

1 45. As a proximate result of the acts of Defendants, and each of them, Plaintiffs
2 and members of the Plaintiff Class have suffered damage to their reputation as well as
3 shame, humiliation and embarrassment in the community.

4 **WHEREFORE**, Plaintiffs and the Plaintiff Class request that this Court:

5 A. Issue a declaratory judgment that the customs, practices, policies, and
6 acts described in this Complaint violate the Fourth and Fourteenth Amendments to the
7 United States Constitution.

8 B. Grant permanent injunctive relief enjoining Defendants from enforcing
9 laws in a discriminatory manner by targeting, harassing, and/or arresting men because
10 they are perceived to desire, seek, and/or engage in non-monetary intimate association
11 with members of the same sex;

12 C. Award Plaintiffs and the Plaintiff Class one million (\$1,000,000.00)
13 compensatory damages against Defendants, jointly and severally, for violations of Federal
14 Law as set forth above;

15 D. Award Plaintiffs their costs, expenses, and reasonable attorney's fees
16 pursuant to 42 U.S.C. § 1988;

17 E. And award such further relief as the court may deem just and proper.

18
19 Dated: June 25, 2020

20 ss Bruce W. Nickerson